

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW H. PETERS, BAYVIEW
SPECIALTY SERVICES LLC,
COASTLINE SPECIALTY SERVICES
LLC, STRAND VIEW CORPORATION,
INNOVATIVE SPECIALTY SERVICES
LLC, PARAGON PARTNERS LLC (D/B/A
PARAGON MEDICAL PARTNERS),
CARDEA CONSULTING LLC, PRAXIS
MARKETING SERVICES LLC,
PROFESSIONAL RX PHARMACY LLC,
INLAND MEDICAL CONSULTANTS LLC
(D/B/A ADVANCED THERAPEUTICS),
PORTLAND PROFESSIONAL PHARMACY
LLC, SUNRISE PHARMACY LLC,
PROFESSIONAL 205 PHARMACY LLC
(D/B/A PROFESSIONAL CENTER 205
PHARMACY), SYNERGY MEDICAL
SYSTEMS LLC (D/B/A SYNERGY RX),
SYNERGY RX LLC (D/B/A SYNERGY
RX), PRESTIGE PROFESSIONAL
PHARMACY, JMSP LLC (D/B/A
PROFESSIONAL CENTER 205

No. 2:24-cv-00287 WBS CKD

MEMORANDUM AND ORDER RE:
PLAINTIFF'S MOTION TO STRIKE
AFFIRMATIVE DEFENSES¹

¹ The motion is decided on the papers without oral argument pursuant to Local Rule 230(g). The scheduled October 28, 2024 hearing on the motion is hereby VACATED.

1 PHARMACY), MPKM, LLC (D/B/A
2 PROFESSIONAL CENTER PHARMACY),
3 ONE WAY DRUG LLC (D/B/A PARTELL
4 PHARMACY), PARTELL PHARMACY LLC,
5 OPTIMUM CARE PHARMACY INC.
(D/B/A MARBELLA PHARMACY),
6 GLENDALE PHARMACY LLC, and LAKE
FOREST PHARMACY (D/B/A
LAKEFOREST PHARMACY),
Defendants.

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9 The United States brought this action against Matthew
10 Peters and several pharmacies and other corporate entities,
11 alleging that they operated a kickback scheme that submitted
12 claims for prescription medications to federal government
13 insurance programs in violation of the False Claims Act. (Docket
14 No. 50.) Answers were filed by One Way Drug LLC (Docket No. 52
15 ("One Way Def.")) and Matthew Peters and the other corporate
16 defendants, with the exception of those subject to default²
17 (Docket No. 53 ("Peters Def.")). The government now moves to
18 strike several affirmative defenses asserted in defendants'
19 answers. (Docket No. 56.)

20 Rule 12(f) authorizes the court to "strike from a
21 pleading an insufficient defense or any redundant, immaterial,
22 impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "The
23 function of a 12(f) motion to strike is to avoid the expenditure
24 of time and money that must arise from litigating spurious issues
25 by dispensing with those issues prior to trial" Fantasy,

26
27 ² The Clerk entered default as to Inland Medical
28 Consultants LLC, Professional Rx Pharmacy LLC, Synergy Medical
Systems LLC, and Synergy RX LLC. (Docket No. 63.)

1 Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993) (cleaned
2 up), rev'd on other grounds, Fogerty v. Fantasy, Inc., 510 U.S.
3 517, 114 (1994).

4 "Affirmative defenses may be insufficient 'as a matter
5 of law' or 'as a matter of pleading.'" Bruno v. Equifax Info.
6 Servs., No. 2:17-cv-0327 WBS EFB, 2017 WL 2833393, at *2 (E.D.
7 Cal. June 30, 2017) (quoting Harris v. Chipotle Mexican Grill,
8 Inc., 303 F.R.D. 625, 627 (E.D. Cal. 2014)).

9 I. Legal Insufficiency

10 "An affirmative defense is insufficient as a matter of
11 law 'if it lacks merit under any set of facts the defendant might
12 allege.'" Bruno, 2017 WL 2833393, at *2 (quoting Dodson v.
13 Munirs Co., No. 13-cv-0399 LKK DAD, 2013 WL 3146818, at *7 (E.D.
14 Cal. June 18, 2013)).

15 Here, the affirmative defense of laches (One Way Def.
16 15) is insufficient as a matter of law because "[t]he government
17 is not subject to the defense of laches when enforcing its
18 rights." See United States v. Menatos, 925 F.2d 333, 335 (9th
19 Cir. 1991) (citing United States v. Summerlin, 310 U.S. 414, 416
20 (1940); United States v. McLeod, 721 F.2d 282, 285 (9th Cir.
21 1983)). Accordingly, One Way's fifteenth affirmative defense
22 will be stricken.³

23 II. Inadequate Pleading

24 The government argues that defendants have failed to

25 ³ The government also argues that several other equitable
26 defenses, including estoppel, bad faith, unclean hands, and
27 failure to mitigate damages, are unavailable as a matter of law.
28 While these defenses may ultimately be unavailable, the case law
cited is not persuasive enough to warrant striking these defenses
on the grounds of legal insufficiency at the pleading stage.

1 adequately plead the affirmative defenses of estoppel (One Way
2 Def. 10, Peters Def. 2); ratification (One Way Def. 12); waiver
3 and release (One Way Defs. 8-9); unclean hands (One Way Def. 11);
4 failure to mitigate damages (One Way Def. 14, Peters Def. 4);
5 damages and claims barred by express contract (Peters Def. 5);
6 contribution and indemnification (Peters Def. 11); bad faith (One
7 Way Def. 16); and "all other defenses enumerated in Rule 8(c)"
8 (One Way Drug Def. 17).

9 The parties agree that the "fair notice" standard
10 governs the pleading of affirmative defenses.⁴ Under this
11 standard, an affirmative defense is insufficient if it fails to
12 provide "fair notice" of its nature and grounds to the plaintiff.
13 Kohler v. Flava Enters., Inc., 779 F.3d 1016, 1019 (9th Cir.
14 2015). "[T]he 'fair notice' required by the pleading standards
15 only requires describing the defense in 'general terms.'" Id.
16 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal
17 Practice and Procedure § 1274 (3d ed. 1998)).

18 While this standard is "less demanding" than that
19 applied under Rule 12(b)(6), "'it still requires a party to plead
20 some factual basis for its allegations.'" Television Educ., Inc.
21 v. Contractors Intelligence Sch., Inc., No. 2:16-cv-1433 WBS EFB,
22 2016 WL 7212791, at *1 (E.D. Cal. Dec. 12, 2016) (quoting Beco

23
24 ⁴ The result here would be the same under the more
25 demanding Rule 12(b)(6) pleading standard, which some courts have
26 applied in considering motions to strike affirmative defenses.
27 See, e.g., Goobich v. Excelligence Learning Corp., No. 5:19-cv-
28 06771 EJD, 2020 WL 1503685, at *2 (N.D. Cal. Mar. 30, 2020)
("[T]he courts in [the Northern District] have generally applied
the Twombly/Iqbal pleading standard to affirmative defenses.")
(collecting cases).

1 Dairy Automation, Inc. v. Global Tech Sys., Inc., No. 1:12-cv-
2 1310 LJO SMS, 2015 WL 5732595, at *10 (E.D. Cal. Sept. 28,
3 2015)); see also Est. of Jackson v. City of Modesto, No. 1:21-cv-
4 0415 AWI EPG, 2023 WL 2246872, at *3 (E.D. Cal. Feb. 27, 2023)
5 (same). "Mere 'reference to a [legal] doctrine . . . is
6 insufficient.'" Television Educ., 2016 WL 7212791, at *1
7 (quoting Qarbon.com Inc. v. eHelp Corp., 315 F. Supp. 2d 1046,
8 1049 (N.D. Cal. 2004)); see also In re Honest Co., Inc. Sec.
9 Litig., 343 F.R.D. 147, 152 (C.D. Cal. 2022) ("A defendant is not
10 free to conjure its responses out of thin air, as there must be
11 'at least some . . . factual basis in support of its affirmative
12 defense.'"") (quoting Rosen v. Masterpiece Mktg. Grp., LLC, 222 F.
13 Supp. 3d 793, 799 (C.D. Cal. 2016)).

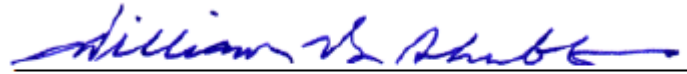
14 Defendants have failed to adequately plead the defenses
15 at issue. Their answers merely refer to the name of each defense
16 with no supporting allegations whatsoever. Without providing any
17 factual basis for their assertion of these defenses, defendants
18 cannot be said to have provided "fair notice."

19 The law does not require extensive pleading of
20 affirmative defenses. However, defendants must provide more than
21 bare boilerplate references to various doctrines. Accordingly,
22 the motion to strike the defenses enumerated above will be
23 granted.

24 IT IS THEREFORE ORDERED that the government's motion to
25 strike (Docket No. 56) be, and the same hereby is, GRANTED. The
26 eighth, ninth, tenth, eleventh, twelfth, fourteenth, sixteenth,
27 and seventeenth affirmative defenses of One Way's answer, and the
28 second, fourth, fifth, and eleventh defenses of Peters' answer

1 are hereby STRICKEN. Defendants have twenty-one days from the
2 date of this Order to file amended answers, if they can do so
3 consistent with this Order.

4 Dated: October 11, 2024



5 **WILLIAM B. SHUBB**

6 **UNITED STATES DISTRICT JUDGE**